

36.213 Special procedures for sealed bidding in construction contracting.**36.213-1 General.**

Contracting officers shall follow the procedures for sealed bidding in part 14, as modified and supplemented by the requirements in this subpart.

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985. Redesignated at 62 FR 272, Jan. 2, 1997]

36.213-2 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall issue presolicitation notices on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold. Presolicitation notices may also be used when the proposed contract is not expected to exceed the simplified acquisition threshold. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices must—

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range)(see 36.204);

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for inspection without charge;

(5) Specify a date by which requests for the invitation for bids should be submitted;

(6) State whether award is restricted to small businesses; and

(7) Specify any amount to be charged for solicitation documents.

(8) Be publicized through the Governmentwide point of entry in accordance with 5.204.

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 51 FR 19716, May 30, 1986. Redesignated at 62 FR 272, Jan. 2, 1997, as amended at 66 FR 27414, May 16, 2001; 69 FR 59699, Oct. 5, 2004; 71 FR 57368, Sept. 28, 2006]

36.213-3 Invitations for bids.

(a) Invitations for bids for construction shall allow sufficient time for bid preparation (i.e., the period of time between the date invitations are distributed and the date set for opening of bids) (but see 5.203 and 14.202-1) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard to the construction season and the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

(b) Invitations for bids shall be prepared in accordance with subpart 14.2 and this section using the forms prescribed in part 53.

(c) Contracting officers should assure that each invitation for bids includes the following information, when applicable:

(1) The appropriate wage determination of the Secretary of Labor (see subpart 22.4), or, if the invitation for bids must be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see 14.208 and 22.404-3(b)).

(2) The Performance of Work by the Contractor clause (see 36.501 and 52.236-1).

(3) The magnitude of the proposed construction project (see 36.204).

(4) The period of performance (see subpart 11.4).

(5) Arrangements made for bidders to inspect the site and examine the data concerning performance of the work (see 36.210).

(6) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during construction.

(7) Information concerning the prebid conference (see 14.207).

(8) Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders (see subpart 9.1).

(9) Any special instructions concerning bids, alternate bids, and award.

(10) Any instructions concerning reporting requirements.

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(d) The contracting officer shall send invitations for bids to prospective bidders who requested them in response to the presolicitation notice, and should send them to other prospective bidders upon their specific request (see 5.102(a)).

[48 FR 42356, Sept. 19, 1983, as amended at 50 FR 1744, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985; 60 FR 48249, Sept. 18, 1995. Redesignated at 62 FR 272, Jan. 2, 1997, as amended at 68 FR 43856, July 24, 2003]

36.213-4 Notice of award.

When a notice of award is issued, it shall be done in writing or electronically, shall contain information required by 14.408, and shall—

- (a) Identify the invitation for bids;
- (b) Identify the contractor's bid;
- (c) State the award price;
- (d) Advise the contractor that any required payment and performance bonds must be promptly executed and returned to the contracting officer;
- (e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

[48 FR 42356, Sept. 19, 1983, as amended at 60 FR 34739, July 3, 1995; 60 FR 42657, Aug. 16, 1995. Redesignated at 62 FR 272, Jan. 2, 1997]

36.214 Special procedures for price negotiation in construction contracting.

(a) Agencies shall follow the policies and procedures in part 15 when negotiating prices for construction.

(b) The contracting officer shall evaluate proposals and associated certified cost or pricing data and data other than certified cost or pricing data and shall compare them to the Government estimate.

(1) When submission of certified cost or pricing data is not required (see 15.403-1 and 15.403-2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (e.g., wage rates or fringe benefits, significant materials, equipment allowances, and sub-contractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the

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Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file.

(c) When appropriate, additional pricing tools may be used. For example, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

[48 FR 42356, Sept. 19, 1983, as amended at 53 FR 34228, Sept. 2, 1988; 60 FR 48218, Sept. 18, 1995. Redesignated at 62 FR 272, Jan. 2, 1997, as amended at 62 FR 51271, Sept. 30, 1997; 75 FR 53149, Aug. 30, 2010]

36.215 Special procedures for cost-reimbursement contracts for construction.

Contracting officers may use a cost-reimbursement contract to acquire construction only when its use is consistent with subpart 16.3 and part 15 (see 15.404(c)(4)(i) for fee limitation on cost-reimbursement contracts).

[48 FR 42356, Sept. 19, 1983. Redesignated at 62 FR 272, Jan. 2, 1997; 62 FR 51271, Sept. 30, 1997]

Subpart 36.3—Two-Phase Design-Build Selection Procedures

SOURCE: 62 FR 272, Jan. 2, 1997, unless otherwise noted.

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by 10 U.S.C. 2305a and 41 U.S.C. 253m.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal acquisition planning (see part 7), if considering the use of two-phase design-build selection procedures, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures shall be used when the